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HOUSE BILL 436

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; AMENDING THE SCHOOL
PERSONNEL ACT TO CLARIFY THE PROCESS FOR TERMINATION AND
DISCHARGE OF SCHOOL EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-10A-2 NMSA 1978 (being Laws 1975,
Chapter 306, Section 2, as amended) is amended to read:

"22-10A-2. DEFINITIONS.--As used in the School Personnel
Act:

A. "discharge" means the act of severing the
employment relationship with a [~~certified~~] licensed school
employee prior to the expiration of the current employment
contract or severing the employment relationship of an
unlicensed school employee at any time after the unlicensed
school employee's probationary period;

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1 B. "responsibility factor" means a value of 1.20
2 for an elementary school principal, 1.40 for a middle school or
3 junior high school principal, 1.60 for a high school principal,
4 1.10 for an assistant elementary school principal, 1.15 for an
5 assistant middle school or assistant junior high school
6 principal and 1.25 for an assistant high school principal;

7 C. "state agency" means any state institution or
8 state agency providing an educational program requiring the
9 employment of [~~certified~~] licensed school instructors;

10 D. "sabbatical leave" means leave of absence with
11 pay as set by the local school board or governing authority of
12 a state agency during all or part of a regular school term for
13 purposes of study or travel related to the staff member's
14 duties and of direct benefit to the instructional program;

15 E. "terminate" means [~~in the case of a certified~~
16 ~~school employee~~] the act of not reemploying [~~an~~] a licensed
17 school employee for the ensuing school year [~~and, in the case~~
18 ~~of a noncertified school employee, the act of severing the~~
19 ~~employment relationship with the employee~~];

20 F. "working day" means every calendar day,
21 excluding Saturday, Sunday or legal holiday; and

22 G. "just cause" means a reason that is rationally
23 related to [~~an~~] a school employee's competence or turpitude or
24 the proper performance of the employee's duties and that is not
25 in violation of the school employee's civil or constitutional

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1 rights."

2 Section 2. Section 22-10A-21 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 113, as amended) is amended to read:

4 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

5 A. All employment contracts between [~~local~~] a
6 school [~~boards~~] district or state agency and [~~certified~~]
7 licensed school [~~personnel and between governing authorities of~~
8 ~~state agencies and certified school instructors~~] employees
9 shall be in writing on forms approved by the [~~state board~~]
10 department. These forms shall contain and specify the term of
11 service, the salary to be paid, the method of payment, the
12 causes for termination of the contract and other provisions
13 required by [~~the regulations of the state board~~] rules of the
14 department.

15 B. All employment contracts between [~~local~~] a
16 school [~~boards~~] district or state agency and [~~certified~~]
17 licensed school [~~personnel and between governing authorities of~~
18 ~~state agencies and certified school instructors~~] employees
19 shall be for a period of one school year except:

20 (1) contracts for less than one school year
21 are permitted to fill personnel vacancies [~~which~~] that occur
22 during the school year;

23 (2) contracts for the remainder of a school
24 year are permitted to staff programs when the availability of
25 funds for the programs is not known until after the beginning

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1 of the school year;

2 (3) contracts for less than one school year
3 are permitted to staff summer school programs and to staff
4 federally funded programs in which the federally approved
5 programs are specified to be conducted for less than one school
6 year;

7 (4) contracts not to exceed three years are
8 permitted for [~~certified~~] school administrators in public
9 schools who are engaged in administrative functions for more
10 than one-half of their employment time; and

11 (5) contracts not to exceed three years are
12 permitted at the discretion of the local [~~school board~~]
13 superintendent for [~~certified~~] licensed school [~~instructors~~]
14 employees in public schools or state agencies who have been
15 employed in the school district for three consecutive school
16 years.

17 C. Persons employed under contracts for periods of
18 less than one school year as provided in Paragraphs (1) and (2)
19 of Subsection B of this section shall be accorded all the
20 duties, rights and privileges of the [~~Certified~~] School
21 Personnel Act.

22 D. In determination of eligibility for unemployment
23 compensation rights and benefits for [~~certified~~] licensed
24 school [~~instructors~~] employees where those rights and benefits
25 are claimed to arise from the employment relationship [~~between~~

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1 ~~governing authorities of state agencies or local school boards~~
2 ~~and certified school instructors~~], that period of a year not
3 covered by a school year shall not be considered an
4 unemployment period.

5 E. Except as provided in Section [~~22-10-12~~]
6 22-10A-23 NMSA 1978, a person employed by contract pursuant to
7 this section has no legitimate objective expectancy of
8 reemployment, and no contract entered into pursuant to this
9 section shall be construed as an implied promise of continued
10 employment pursuant to a subsequent contract."

11 Section 3. Section 22-10A-22 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 114, as amended) is repealed and a new
13 Section 22-10A-22 NMSA 1978 is enacted to read:

14 "22-10A-22. [NEW MATERIAL] DEFINITIONS--STATE AGENCY
15 COVERAGE.--

16 A. As used in Sections 22-10A-21 through 22-10A-30
17 NMSA 1978:

18 (1) "local superintendent" includes the
19 governing authority of a state agency; and

20 (2) "school principal" includes other school
21 district personnel who have authority to supervise school
22 employees and to correct their performance and recommend
23 termination or discharge; "school principal" also includes the
24 personnel of a state agency who have authority to supervise
25 licensed school employees of the state agency.

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1 B. Licensed school employees in state agencies are
2 subject to the School Personnel Act. Employees of state
3 agencies who are not covered by the Personnel Act and who were
4 covered by the provisions of the School Personnel Act prior to
5 the effective date of this 2009 act shall continue to be
6 covered by the provisions of the School Personnel Act."

7 Section 4. Section 22-10A-23 NMSA 1978 (being Laws 1967,
8 Chapter 16, Section 115, as amended) is repealed and a new
9 Section 22-10A-23 NMSA 1978 is enacted to read:

10 "22-10A-23. [NEW MATERIAL] LICENSED SCHOOL EMPLOYEES--
11 REEMPLOYMENT.--

12 A. Each school principal shall recommend to the
13 local superintendent the reemployment or termination of each
14 licensed school employee under the principal's supervision.

15 B. Twenty working days before the last day of the
16 school year of the existing employment contract, the school
17 principal shall serve written notice on each licensed school
18 employee the school principal supervises of the school
19 principal's intention to recommend reemployment or termination.
20 The local superintendent may accept or reject the school
21 principal's recommendation and shall notify the licensed school
22 employee on or before the last day of the school year.

23 C. A notice of reemployment issued by a local
24 superintendent is an offer of employment for the ensuing year.
25 Each licensed school employee shall deliver to the local

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1 superintendent by whom the licensed school employee is employed
2 a written acceptance or rejection of reemployment for the
3 ensuing school year within fifteen days from the date written
4 notice of reemployment is served upon the licensed school
5 employee.

6 D. Delivery of the written acceptance of
7 reemployment by a licensed school employee creates a binding
8 employment contract between the licensed school employee and
9 the school district or state agency until the parties enter
10 into a formal written employment contract. Written contracts
11 between school districts or state agencies and licensed school
12 employees shall be executed by the parties not later than ten
13 days before the first day of a school year.

14 E. Failure of a local superintendent to serve a
15 written notice of reemployment or termination on a licensed
16 school employee shall be construed to mean that a notice of
17 reemployment was served on the licensed school employee for the
18 ensuing school year according to the terms of the existing
19 employment contract, but subject to any additional compensation
20 allowed other licensed school employees of like qualifications
21 and experience employed by the school district or state agency.
22 Nothing in this subsection shall be construed to mean that
23 failure of a local superintendent to serve a written notice of
24 reemployment or termination automatically extends a licensed
25 school employee's employment contract for a period in excess of

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1 one school year."

2 Section 5. Section 22-10A-24 NMSA 1978 (being Laws 1986,
3 Chapter 33, Section 22, as amended) is repealed and a new
4 Section 22-10A-24 NMSA 1978 is enacted to read:

5 "22-10A-24. [NEW MATERIAL] LICENSED SCHOOL EMPLOYEES--
6 TERMINATION.--

7 A. The written notice of the school principal's
8 intention to recommend termination or the local
9 superintendent's decision to terminate shall include the
10 reasons for the recommendation or decision. The reasons shall
11 not be publicly disclosed by the school principal or local
12 superintendent.

13 B. If a local superintendent rejects a school
14 principal's recommendation for reemployment of a licensed
15 school employee, the local superintendent shall serve notice on
16 the licensed school employee on or before the last day of the
17 school year, stating the local superintendent's reasons for
18 rejecting the recommendation. The reasons shall not be
19 publicly disclosed by the local superintendent.

20 C. If the licensed school employee has worked for
21 the school district or state agency for fewer than three
22 consecutive years, including the current school year, the
23 reason for recommending or deciding to terminate may be that
24 which the school principal or local superintendent deems
25 sufficient, and the reason shall not provide a basis for

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1 contesting the decision under the School Personnel Act. The
2 licensed school employee may submit a written statement to the
3 school principal and the local superintendent contesting the
4 reason given for termination, which statement shall be made a
5 part of the licensed school employee's personnel file in the
6 school district or state agency.

7 D. If the school principal recommends termination
8 and the local superintendent accepts the recommendation or if
9 the local superintendent rejects a school principal's
10 recommendation for reemployment of a licensed school employee
11 who has worked for the school district or state agency for at
12 least three consecutive years, including the current school
13 year, the licensed school employee may contest the licensed
14 school employee's termination as provided in this section. A
15 local superintendent may not terminate a licensed school
16 employee who has been employed by a school district or state
17 agency for at least three consecutive years, including the
18 current school year, without just cause.

19 E. Within five days of receiving written notice of
20 the school principal's intention to recommend termination or of
21 receiving written notice of the local superintendent's
22 rejection of the school principal's recommendation for
23 reemployment, the licensed school employee may request a
24 hearing. The local superintendent shall not issue a decision
25 on the school principal's recommendation for termination until

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1 after the five days provided to the licensed school employee to
2 request a hearing.

3 F. A hearing requested by a licensed school
4 employee shall take place within fifteen days of the request
5 for hearing, unless the parties agree to a later date. The
6 hearing shall be conducted by the local superintendent in the
7 case of a recommendation to terminate by a school principal.
8 The hearing shall be conducted by a qualified independent
9 arbitrator appointed in the same manner as one provided for
10 appeals in Section 22-10A-25 NMSA 1978 when the local
11 superintendent rejects the school principal's recommendation to
12 reemploy. The school district shall bear the costs of a
13 hearing before an arbitrator provided pursuant to this
14 subsection.

15 G. If the local superintendent is unable by reason
16 of a conflict to hold the hearing, an independent arbitrator
17 shall be appointed in the same manner as provided in Subsection
18 F of this section.

19 H. The local superintendent or independent
20 arbitrator may issue subpoenas for the attendance of witnesses
21 and for the production of books, records, documents and other
22 evidence and shall have the power to administer oaths.
23 Subpoenas shall be served and enforced in the manner provided
24 by law for the service and enforcement of subpoenas in a civil
25 action.

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1 I. The licensed school employee shall submit in
2 writing to the local superintendent or arbitrator a contention
3 that the recommendation or decision to terminate was made
4 without just cause. The written contention shall specify the
5 grounds on which it is contended that the recommendation or
6 decision was without just cause and shall include a statement
7 of the facts that the licensed school employee believes support
8 the licensed school employee's contention. This written
9 statement shall be submitted within ten working days from the
10 date the licensed school employee requested the hearing.

11 J. The submission of the written contention
12 constitutes:

13 (1) a representation on the part of the
14 licensed school employee that the licensed school employee can
15 support the licensed school employee's contention; and

16 (2) an acknowledgment that the school
17 principal or local superintendent may offer the causes for the
18 school principal's or local superintendent's recommendation or
19 decision and any relevant data in the school principal's or
20 local superintendent's possession in rebuttal of the licensed
21 school employee's contentions.

22 K. The local superintendent or arbitrator shall
23 meet to hear the licensed school employee's statement in no
24 fewer than five or more than fifteen working days after the
25 local superintendent or arbitrator receives the statement. The

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1 licensed school employee and the school principal, or the
2 licensed school employee and the local superintendent if the
3 hearing is before an arbitrator, may each be accompanied by a
4 representative of the licensed school employee's, school
5 principal's or local superintendent's choice. First the school
6 principal or local superintendent shall present the factual
7 basis for the recommendation or decision that just cause exists
8 for the termination of the licensed school employee, limited to
9 those reasons provided to the employee. The licensed school
10 employee shall then present the licensed school employee's
11 contentions, limited to those grounds specified in Subsection I
12 of this section. The school principal or local superintendent
13 may offer such rebuttal testimony as the school principal or
14 local superintendent deems relevant. All witnesses may be
15 questioned by the licensed school employee or the licensed
16 school employee's representative and the school principal or
17 the local superintendent or the school principal's or local
18 superintendent's representative, as applicable. The local
19 superintendent or arbitrator may consider only such evidence as
20 is presented at the hearing and need consider only such
21 evidence as the local superintendent or arbitrator considers
22 reliable. No record shall be made of the proceeding.

23 L. The local superintendent or arbitrator shall
24 render a written decision within twenty days of the conclusion
25 of the hearing and the local superintendent shall notify the

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1 licensed school employee and the school principal immediately
2 in writing of the decision to reemploy or terminate. The
3 decision may be appealed as provided in Section 22-10A-25 NMSA
4 1978."

5 Section 6. Section 22-10A-25 NMSA 1978 (being Laws 1986,
6 Chapter 33, Section 23, as amended) is amended to read:

7 "22-10A-25. LICENSED SCHOOL EMPLOYEES--APPEALS--
8 INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--BINDING
9 DECISION.--

10 A. [~~An~~] A licensed school employee who is still
11 aggrieved by a decision of a local [~~school board or governing~~
12 ~~authority~~] superintendent or independent arbitrator rendered
13 pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may appeal
14 the decision to an arbitrator. A written appeal shall be
15 submitted to the local superintendent [~~or administrator~~] within
16 five working days from the receipt of the [~~local school board's~~
17 ~~or governing authority's~~] written decision [~~or the refusal of~~
18 ~~the board or authority to grant a hearing~~]. The appeal shall
19 be accompanied by a statement of particulars specifying the
20 grounds on which it is contended that the decision was
21 impermissible pursuant to Subsection [~~E~~] D of Section
22 [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a statement of
23 facts supporting the contentions. Failure of the licensed
24 school employee to submit a timely appeal or a statement of
25 particulars with the appeal shall disqualify [~~him~~] the licensed

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1 school employee for any appeal and render the local [~~school~~
2 ~~board's or governing authority's~~] superintendent's or
3 arbitrator's decision final.

4 B. The local [~~school board or governing authority~~]
5 superintendent and the licensed school employee shall meet
6 within ten working days from the receipt of the request for an
7 appeal and select an independent arbitrator to conduct the
8 appeal unless the parties agree to a later date. If the
9 parties fail to agree on an independent arbitrator, they shall
10 request the presiding judge in the judicial district in which
11 the employee's public school or state agency is located to
12 select one. The presiding judge shall select the independent
13 arbitrator within five working days from the date of the
14 parties' request.

15 C. A qualified independent arbitrator shall be
16 appointed who is an attorney versed in employment practices and
17 school procedures and who [~~preferably~~] has experience in the
18 practice of law. No person shall be appointed to serve as the
19 independent arbitrator who has any direct or indirect financial
20 interest in the outcome of the proceeding, has any relationship
21 to any party in the proceeding, is employed by the [~~local~~]
22 school [~~board or governing authority~~] district or state agency
23 or is a member of or employed by any professional or labor
24 organization of which the employee is a member.

25 D. Appeals from the decision of the local [~~school~~

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1 ~~board or governing authority~~ superintendent shall be decided
2 after a de novo hearing before the independent arbitrator. The
3 issue to be decided by the independent arbitrator is whether
4 there was just cause for the decision of the local ~~[school~~
5 ~~board or governing authority]~~ superintendent to terminate the
6 employee.

7 E. The de novo hearing shall be held within thirty
8 working days from the selection of the independent arbitrator
9 unless the parties and the arbitrator agree to a later date.

10 The arbitrator shall give written notice of the date, time and
11 place of the hearing, and such notice shall be sent to the
12 employee and the local ~~[school board or governing authority]~~
13 superintendent.

14 F. Each party has the right to ~~[be represented by~~
15 ~~counsel]~~ have a representative of the party's choice at the
16 hearing before the independent arbitrator.

17 G. Discovery shall be limited to depositions and
18 requests for production of documents on a time schedule to be
19 established by the independent arbitrator.

20 H. The independent arbitrator may issue subpoenas
21 for the attendance of witnesses and for the production of
22 books, records, documents and other evidence and shall have the
23 power to administer oaths. Subpoenas ~~[so issued]~~ shall be
24 served and enforced in the manner provided by law for the
25 service and enforcement of subpoenas in a civil action.

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1 I. The rules of civil procedure shall not apply to
2 the de novo hearing, but it shall be conducted so that ~~[both]~~
3 the contentions and responses of both parties are amply and
4 fairly presented. To this end, the independent arbitrator
5 shall permit either party or the party's representative to call
6 and examine witnesses, cross-examine witnesses and introduce
7 exhibits. The technical rules of evidence shall not apply,
8 but, in ruling on the admissibility of evidence, the
9 independent arbitrator shall require reasonable substantiation
10 of statements or records tendered, the accuracy or truth of
11 which is in reasonable doubt.

12 J. The local ~~[school board or governing authority]~~
13 superintendent has the burden of proof and shall prove by a
14 preponderance of the evidence that, at the time the notice of
15 termination was served on the licensed school employee, the
16 local ~~[school board or governing authority]~~ superintendent had
17 just cause to terminate the employee. If the local ~~[school~~
18 ~~board or governing authority]~~ superintendent proves by a
19 preponderance of the evidence that there was just cause for
20 ~~[its]~~ the local superintendent's action, then the burden shifts
21 to the licensed school employee to rebut the evidence presented
22 by the local ~~[school board or governing authority]~~
23 superintendent.

24 K. The independent arbitrator shall uphold the
25 local ~~[school board's or governing authority's]~~

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1 superintendent's decision only if [~~it~~] the local superintendent
2 proves by a preponderance of the evidence that, at the time the
3 notice of termination was served on the licensed school
4 employee, the local [~~school board or governing authority~~]
5 superintendent had just cause to terminate the employee. If
6 the local [~~school board or governing authority~~] superintendent
7 fails to meet [~~its~~] the burden of proof or if the licensed
8 school employee rebuts the proof offered by the local [~~school~~
9 ~~board or governing authority~~] superintendent, the arbitrator
10 shall reverse the decision of the local [~~school board or~~
11 ~~governing authority~~] superintendent.

12 L. No official record shall be made of the hearing.
13 Either party desiring a record of the arbitration proceedings
14 may, at [~~his~~] the party's own expense, record or otherwise
15 provide for a transcript of the proceedings; provided, however,
16 that the record so provided shall not be deemed an official
17 transcript of the proceedings nor shall it imply any right of
18 automatic appeal or review.

19 M. The independent arbitrator shall render a
20 written decision affirming or reversing the action of the local
21 [~~school board or governing authority~~] superintendent. The
22 decision shall contain findings of fact and conclusions of law.
23 The parties shall receive actual written notice of the decision
24 of the independent arbitrator within ten working days from the
25 conclusion of the de novo hearing.

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1 N. The sole remedies available under this section
2 shall be [~~reinstatement or payment of compensation reinstated~~
3 ~~in full but subject to~~] reemployment and any additional
4 compensation allowed other licensed school employees of like
5 qualifications and experience employed by the school district
6 or state agency and including reimbursement for compensation
7 during the entire period for which compensation was terminated,
8 or both, less an offset for any compensation received by the
9 licensed school employee during the period the compensation was
10 terminated.

11 O. Unless a party can demonstrate prejudice arising
12 from a departure from the procedures established in this
13 section and in Section [~~22-10-14~~] 22-10A-24 NMSA 1978, such
14 departure shall be presumed to be harmless error.

15 P. The decision of the independent arbitrator shall
16 be binding on both parties and shall be final and nonappealable
17 except where the decision was procured by corruption, fraud,
18 deception or collusion, in which case it shall be appealed to
19 the district court in the judicial district in which the public
20 school or state agency is located.

21 Q. Each party shall bear its own costs and
22 expenses. The independent arbitrator's fees and other expenses
23 incurred in the conduct of the arbitration shall be assigned at
24 the discretion of the independent arbitrator.

25 R. [~~Local~~] School districts shall file a record

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1 with the department [~~of education~~] of all terminations and all
2 actions arising from terminations annually."

3 Section 7. Section 22-10A-26 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 118, as amended) is amended to read:

5 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~
6 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do
7 not apply to the following:

8 A. a [~~certified~~] licensed school [~~instructor~~]
9 employee employed to fill the position of a [~~certified~~]
10 licensed school [~~instructor~~] employee entering military
11 service;

12 B. a person who is employed as a [~~certified~~] school
13 administrator; or

14 C. [~~a non-certified~~] an unlicensed school employee
15 employed to perform primarily district-wide management
16 functions."

17 Section 8. Section 22-10A-27 NMSA 1978 (being Laws 1986,
18 Chapter 33, Section 24, as amended) is amended to read:

19 "22-10A-27. SCHOOL EMPLOYEES--DISCHARGE HEARING--
20 PROCEDURES.--

21 A. A local [~~school board or the governing authority~~
22 ~~of a state agency~~] superintendent may discharge a [~~certified~~]
23 school employee only for just cause according to the following
24 procedure:

25 (1) the [~~superintendent~~] school principal

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1 shall serve a written notice of [~~his~~] intent to recommend
2 discharge on the [~~certified~~] school employee in accordance with
3 the law for service of process in civil actions; and

4 (2) the [~~superintendent~~] school principal
5 shall state in the notice of [~~his~~] intent to recommend
6 discharge, the cause for [~~his~~] the recommendation and shall
7 advise the [~~certified~~] school employee of [~~his~~] the school
8 employee's right to a discharge hearing before the local
9 [~~school board or governing authority~~] superintendent as
10 provided in this section.

11 B. A [~~certified~~] school employee who receives a
12 notice of intent to [~~recommend~~] discharge pursuant to
13 Subsection A of this section may exercise [~~his~~] the school
14 employee's right to a hearing before the local [~~school board or~~
15 ~~governing authority~~] superintendent by giving the local
16 superintendent [~~or administrator~~] written notice of that
17 election within five working days of [~~his~~] the school
18 employee's receipt of the notice to recommend discharge.

19 C. If the local superintendent is unable by reason
20 of a conflict to hold the hearing, an independent arbitrator
21 shall be appointed in the same manner as one provided for
22 appeals in Section 22-10A-28 NMSA 1978. The school district
23 shall bear the costs of a hearing before an arbitrator provided
24 for in this subsection.

25 [~~C.~~] D. The local [~~school board or governing~~

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1 ~~authority]~~ superintendent or arbitrator shall hold a discharge
2 hearing, no [~~less~~] fewer than twenty and no more than forty
3 working days after the local superintendent [~~or administrator~~]
4 receives the written election from the [~~certified~~] school
5 employee, and shall give the [~~certified~~] school employee at
6 least ten [~~days~~] days' written notice of the date, time and
7 place of the discharge hearing.

8 [~~D. Each party, the local superintendent or~~
9 ~~administrator]~~ E. The school principal and the [~~certified~~
10 school employee may each be accompanied by a [~~person~~
11 representative of [~~his~~] the school principal's or school
12 employee's choice.

13 [~~E. F.~~] F. The parties shall complete and respond to
14 discovery by deposition and production of documents prior to
15 the discharge hearing.

16 [~~F. G.~~] G. The local [~~school board or governing~~
17 ~~authority]~~ superintendent or arbitrator shall have the
18 authority to issue subpoenas for the attendance of witnesses
19 and to produce books, records, documents and other evidence at
20 the request of either party and shall have the power to
21 administer oaths. Subpoenas shall be served and enforced in
22 the manner provided by law for the service and enforcement of
23 subpoenas in a civil action.

24 [~~G. H.~~] H. The [~~local superintendent or administrator]~~
25 school principal shall have the burden of proving by a

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1 preponderance of the evidence that, at the time of the notice
2 of intent to recommend discharge, [~~he had~~] there was just cause
3 to discharge the [~~certified~~] school employee.

4 [~~H.~~] I. The [~~local superintendent or administrator~~]
5 school principal shall present [~~his~~] evidence first, with the
6 [~~certified~~] school employee presenting [~~his~~] evidence
7 thereafter. The local [~~school board or governing authority~~]
8 superintendent or arbitrator shall permit either party or the
9 party's representative to call, examine and cross-examine
10 witnesses and to introduce documentary evidence.

11 [~~F.~~] J. An official record shall be made of the
12 hearing. Either party may have one copy of the record at the
13 expense of the [~~local~~] school [~~board or governing authority~~]
14 district or state agency.

15 [~~J.~~] K. The local [~~school board~~] superintendent or
16 arbitrator shall render [~~its~~] a written decision within twenty
17 days of the conclusion of the discharge hearing. The local
18 superintendent shall notify the school employee and the school
19 principal in writing of the decision to discharge. A school
20 employee may appeal the local superintendent's or arbitrator's
21 decision as provided in Section 22-10A-28 NMSA 1978."

22 Section 9. Section 22-10A-28 NMSA 1978 (being Laws 1986,
23 Chapter 33, Section 25, as amended) is amended to read:

24 "22-10A-28. SCHOOL EMPLOYEE DISCHARGE--APPEALS--
25 INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--BINDING

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1 DECISION.--

2 A. A [~~certified~~] school employee aggrieved by a
3 decision of a local [~~school board or governing authority~~]
4 superintendent to discharge [~~him~~] the school employee after a
5 discharge hearing held pursuant to Section [~~22-10-17~~] 22-10A-27
6 NMSA 1978 may appeal the decision to an independent arbitrator.
7 A written notice of appeal shall be submitted to the local
8 superintendent [~~or administrator~~] within five working days from
9 the receipt of the copy of the written decision of the local
10 [~~school board or governing authority~~] superintendent.

11 B. The local [~~school board or governing authority~~]
12 superintendent and the [~~certified~~] school employee shall meet
13 within ten calendar days from the receipt of the notice of
14 appeal and select an independent arbitrator to conduct the
15 appeal, or, in the event the parties fail to agree on an
16 independent arbitrator, they shall request the presiding judge
17 in the judicial district in which the public school or state
18 agency is located to select the independent arbitrator. The
19 presiding judge shall select the independent arbitrator within
20 five working days from the date of the parties' request.

21 C. A qualified independent arbitrator shall be
22 appointed who is an attorney versed in employment practices and
23 school procedures. No person shall be appointed to serve as
24 the independent arbitrator who has any direct or indirect
25 financial interest in the outcome of the proceeding, has any

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1 relationship to any party in the proceeding, is employed by the
2 [~~local~~] school [~~board or governing authority~~] district or state
3 agency or is a member of or employed by any professional
4 organization of which the [~~certified~~] school employee is a
5 member.

6 D. Appeals from the decision of the local [~~school~~
7 ~~board or governing authority~~] superintendent shall be decided
8 after a de novo hearing before the independent arbitrator. The
9 local [~~school board or governing authority~~] superintendent
10 shall have the burden of proving by a preponderance of the
11 evidence that, at the time of the [~~notice of intent to~~
12 ~~recommend~~] decision to discharge, the local superintendent [~~or~~
13 ~~administrator~~] had just cause to discharge the [~~certified~~]
14 school employee. The local [~~school board or governing~~
15 ~~authority~~] superintendent shall present [~~its~~] evidence first,
16 with the [~~certified~~] school employee presenting [~~his~~] evidence
17 thereafter.

18 E. The hearing shall be held within thirty working
19 days from the selection of the independent arbitrator. The
20 independent arbitrator shall give written notice of the date,
21 time and place of the hearing, and such notice shall be sent to
22 the [~~certified~~] school employee and the local [~~school board or~~
23 ~~governing authority~~] superintendent.

24 F. Each party has the right to [~~be represented by~~
25 ~~counsel~~] have a representative of the party's choice at the

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1 hearing before the independent arbitrator.

2 G. Discovery shall be limited to depositions and
3 requests for production of documents on a time schedule to be
4 established by the independent arbitrator.

5 H. The independent arbitrator may issue subpoenas
6 for the attendance of witnesses and for the production of
7 books, records, documents and other evidence and shall have the
8 power to administer oaths. Subpoenas so issued shall be served
9 and enforced in the manner provided by law for the service and
10 enforcement of subpoenas in a civil action [~~or in the manner~~
11 ~~provided by the American arbitration association's voluntary~~
12 ~~labor arbitration rules if that entity is used by the parties~~].

13 I. The rules of civil procedure shall not apply to
14 the de novo hearing, but it shall be conducted so that both
15 contentions and responses of both parties are amply and fairly
16 presented. To this end, the independent arbitrator shall
17 permit either party or the party's representative to call and
18 examine witnesses, cross-examine witnesses and introduce
19 exhibits. The technical rules of evidence shall not apply,
20 but, in ruling on the admissibility of evidence, the
21 independent arbitrator may require reasonable substantiation of
22 statements or records tendered, the accuracy or truth of which
23 is in reasonable doubt.

24 J. The local superintendent has the burden of proof
25 and shall prove by a preponderance of the evidence that, at the

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1 time the notice of discharge was served on the school employee,
2 the local superintendent had just cause to discharge the
3 employee. If the local superintendent proves by a
4 preponderance of the evidence that there was just cause for the
5 local superintendent's action, then the burden shifts to the
6 school employee to rebut the evidence presented by the local
7 superintendent.

8 K. The independent arbitrator shall uphold the
9 local superintendent's decision only if the local
10 superintendent proves by a preponderance of the evidence that,
11 at the time the notice of discharge was served on the school
12 employee, the local superintendent had just cause to discharge
13 the employee. If the local school superintendent fails to meet
14 the burden of proof or the school employee rebuts the proof
15 offered by the local superintendent, the arbitrator shall
16 reverse the decision of the local superintendent.

17 [J-] L. An official record shall be made of the
18 hearing. Either party may order a transcript of the record at
19 [his] the party's own expense.

20 [K-] M. The independent arbitrator shall render a
21 written decision affirming or reversing the action of the local
22 [school board or governing authority] superintendent. The
23 decision shall contain findings of fact and conclusions of law.
24 The parties shall receive the written decision of the
25 independent arbitrator within thirty working days from the

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1 conclusion of the hearing.

2 [L.] N. Unless a party can demonstrate prejudice
3 arising from a departure from the procedures established in
4 this section and in Section [22-10-17] 22-10A-27 NMSA 1978,
5 such departure shall be presumed to be harmless error.

6 [M.] O. The decision of the independent arbitrator
7 shall be final and binding on both parties and shall be
8 nonappealable except where the decision was procured by
9 corruption, fraud, deception or collusion, in which case it may
10 be appealed to the [court of appeals by filing a notice of
11 appeal as provided by the New Mexico rules of appellate
12 procedure] district court in the judicial district in which the
13 public school or state agency is located.

14 [N.] P. Each party shall bear its own costs and
15 expenses. The independent arbitrator's fees and other expenses
16 incurred in the conduct of the arbitration shall be assigned at
17 the discretion of the independent arbitrator."

18 Section 10. Section 22-10A-29 NMSA 1978 (being Laws 1967,
19 Chapter 16, Section 120, as amended) is amended to read:

20 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED
21 PERSONNEL.--

22 A. Payment of compensation to any [certified]
23 school [instructor] employee employed by a [local school board
24 or by the governing authority of a state agency and payment of
25 compensation to any certified school administrator employed by

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1 ~~a local school board~~] school district or state agency shall
2 terminate as of the date, after a hearing, that [~~a written copy~~
3 ~~of the decision of~~] the local [~~school board or the governing~~
4 ~~authority of the state agency~~] superintendent notifies the
5 school employee of the decision to discharge the [~~person is~~
6 ~~served on the person.~~ If the compensation of the person
7 ~~discharged during the term of a written employment contract is~~
8 ~~to be paid monthly during a twelve-month period for services to~~
9 ~~be performed during a period less than twelve months, the~~
10 ~~person shall be entitled to a pro rata share of the~~
11 ~~compensation payments due for the period during the twelve~~
12 ~~months in which no services were to be performed]~~ school
13 employee as provided in Subsection L of Section 22-10A-27 NMSA
14 1978.

15 B. In the event the action of the local [~~school~~
16 ~~board~~] superintendent in discharging a [~~certified~~] school
17 [~~instructor or administrator or the action of the governing~~
18 ~~authority of a state agency in discharging a certified school~~
19 ~~instructor~~] employee is reversed on appeal, payment of
20 compensation to the person shall be reinstated in full but
21 subject to any additional compensation allowed other
22 [~~certified~~] school [~~instructor or administrator~~] employees of
23 like qualifications and experience employed by the school
24 district or state agency and including reimbursement for
25 compensation during the [~~entire~~] period the compensation was

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1 terminated less an offset for any compensation received by the
2 [~~person~~] school employee from a school district or state agency
3 during the period the compensation was terminated."

4 Section 11. Section 22-10A-30 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 123, as amended) is amended to read:

6 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--The
7 [~~state board~~] department shall prescribe by [~~regulations~~] rule
8 procedures to be followed by a [~~local~~] school [~~board or the~~
9 ~~governing authority of a~~] district or state agency in
10 supervising and correcting unsatisfactory work performance of
11 [~~certified~~] school [~~personnel~~] employees before notice of
12 intent to discharge is served upon them [~~and by the governing~~
13 ~~authority of a state agency in supervising and correcting~~
14 ~~unsatisfactory work performance of certified school instructors~~
15 ~~before notice of intent to discharge is served upon them.~~
16 ~~These regulations~~]. The rules shall provide that written
17 records shall be kept on all action taken by a [~~local~~] school
18 [~~board or the governing authority of a~~] district or state
19 agency to improve [~~any person's~~] a school employee's
20 unsatisfactory work performance and all improvements made in
21 [~~the person's~~] that employee's work performance. These written
22 records shall be introduced as evidence at any hearing for the
23 [~~person~~] school employee conducted by the [~~local~~] school [~~board~~
24 ~~or the governing authority of the~~] district or state agency."